

ORDINANCE 16-04

(KILGORE COMPANIES ANNEXATION)

WHEREAS, the owners of certain real property, described below, desire to annex such real property to the corporate limits of Hyrum City, Utah; and

WHEREAS, said real property is located within the area proposed for annexation and covers a majority of the private land area within the area proposed for annexation; and

WHEREAS, said real property is equal in value to at least one-third (1/3) of the value of all private real property within the area proposed for annexation; and

WHEREAS, said real property is a contiguous, unincorporated area contiguous to the boundaries of Hyrum City and the annexation thereof will not leave or create an unincorporated island or peninsula; and

WHEREAS, said real property covers 100% of the private land area within the area propose annexation if the area is within an agricultural protection area, or a migratory bird protection area; and

WHEREAS, said property covers an area that is equivalent to less than five percent (5%) of the total land mass of all private real property within Hyrum City; and

WHEREAS, said owners have caused a Petition for Annexation to be filed with the city, together with an accurate plat of the real property which was made under the supervision of a competent, licensed surveyor; and

WHEREAS, on May 5, 2016, the Hyrum City Council received the required Notice of Certification from the City Recorder certifying that the annexation petition meets the requirements of State law; and

WHEREAS, the City Council published and mailed notice of the certification as required by law; and

WHEREAS, no timely protests have been filed in accordance with the provisions of Section 10-2-407, Utah Code Annotated, 1953, as amended; and

WHEREAS, the City Council held the required public hearing after giving notice as required by law, and has

determined annexation of said property is appropriate and desirable;

NOW, THEREFORE, pursuant to Section 10-2-407, Utah Code Annotated 1953, as amended, the City Council of Hyrum City, Utah, hereby adopts, passes, and publishes the following:

AN ORDINANCE AMENDING THE MUNICIPAL ZONING MAP AND ANNEXING CERTAIN REAL PROPERTY AND EXTENDING THE CORPORATE LIMITS OF HYRUM CITY, UTAH (KILGORE COMPANIES - 3 ACRES).

BE IT ORDAINED, by the City Council of Hyrum City, Cache County, State of Utah, as follows:

SECTION 1. That certain real property, more particularly described in Section 2 below is hereby annexed to Hyrum City, Utah, under the conditions of the attached Annexation Agreement and the corporate limits of said city are hereby extended accordingly.

SECTION 2. That the real property which is the subject of this Ordinance is described as follows:

Part of lot 3 of Section 3 Township 10 North Range 1 East of the Salt Lake Meridian, located in Cache County, Utah described as follows:

Beginning at the West Sixteenth corner common to said Section 3 and also to Section 34 Township 11 North of said range and Meridian on the existing Hyrum City Corporate Limit Line; thence North $89^{\circ}55'27''$ E 242.00 Feet along the north line of said Section 3; thence $S0^{\circ}03'12''$ W 540.00 Feet along a line parallel with the west sixteenth line of said Section 3; thence $S89^{\circ}55'27''$ W 242.00 feet to said existing Hyrum City Corporate Limit Line and said sixteenth line to the point of beginning. Containing 3.00 acres, more or less.

SECTION 3. That the real property described in Section 2 above shall be classified as being in the Manufacturing Light to Medium M-1 Zone in accordance with the provisions of Section 17.20.020 of the Hyrum City Municipal Code and the zoning map of Hyrum City shall be amended to include the real property described above.

SECTION 4. A certified copy of this ordinance, an original plat describing the property, and the annexation agreement shall be filed with the Cache County Recorder within thirty (30) days after the date this ordinance is adopted.

SECTION 5. This ordinance shall become effective upon the posting of three (3) copies in each of three (3) public places within the corporate limits of Hyrum City.

ADOPTED AND PASSED by the Hyrum City Council this 7th day of July, 2016.

HYRUM CITY

BY: _____
Stephanie Miller
Mayor

ATTEST:

Stephanie Fricke
City Recorder

Posted:

ANNEXATION AGREEMENT

This ANNEXATION AGREEMENT (this “Agreement”), entered into and effective as of July 7, 2016 (the “Effective Date”), is made between Hyrum City, a Utah municipal corporation (“Hyrum”) and Kilgore Companies, LLC, a Utah limited liability company (“Kilgore”). Hyrum and Kilgore are sometimes collectively referred to as the “Parties” and individually as “Party.”

RECITALS

WHEREAS, Kilgore is the owner of approximately Three (3) Acres of real property which is a portion of parcel 01-003-0030, which portion is more particularly described hereafter (the “Property”);

WHEREAS, the Property will be subject to conditional use approval by Cache County (the “County”);

WHEREAS, Kilgore desires to approve and allow Hyrum to annex the Property and Hyrum desires to annex the Property and provide services and other benefits to Kilgore pursuant to the terms of this Agreement; and

WHEREAS, on April 13, 2016, Kilgore filed a petition and map pursuant to the requirements of Utah Code Annotated § 10-2-403, requesting annexation of the Property into the municipal limits of Hyrum City (the “Petition”); and

NOW, THEREFORE, in consideration of the mutual covenants and promises made herein, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the above recitals, which are incorporated into and made a part of this Agreement, the Parties agree as follows:

AGREEMENT

1. Property. The Property of this Agreement is described as follows:

PART OF LOT 3 OF SECTION 3 TOWNSHIP 10 NORTH
RANGE 1 EAST OF THE SALT LAKE MERIDIAN, LOCATED
IN CACHE COUNTY, UTAH, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST SIXTEENTH CORNER
COMMON TO SAID SECTION 3 AND ALSO TO SECTION 34
TOWNSHIP 11 NORTH OF SAID RANGE AND MERIDIAN
ON THE EXISTING HYRUM CITY CORPORATE LIMIT LINE;
THENCE N89°55’27”e 242.00 FEET ALONG THE NORTH
LINE OF SAID SECTION 3; THENCE S0°03’12”W 540.00
FEET ALONG A LINE PARALLEL WITH THE WEST

SIXTEENTH LINE OF SAID SECTION 3; S89°55'27"W 242.00 FEET TO SAID EXISTING HYRUM CITY CORPORATE LIMIT LINE AND SAID SIXTEENTH LINE TO THE POINT OF BEGINNING.

CONTAINING 3.00 ACRES, MORE OR LESS.

2. Development. Upon annexation, the Property shall become part of Hyrum and all development or improvements of any nature shall comply with the applicable ordinances, standards, regulations, procedures, and policies established by Hyrum, except as defined in Section 4 of this Agreement.

3. Zoning. Zoning of the Property shall be M2, which shall include at least a 100' height allowance and shall include such uses as concrete production, mining, and asphalt production.

4. Site Plan. Hyrum acknowledges that Kilgore will use the Property for concrete, mining and asphalt production (the "Site Plan") and while complying with City Ordinances Hyrum agrees to work with Kilgore to expeditiously, and with its support, approve any conditional use permits, and any other permits, with the Hyrum City planning commission (the "Commission"), the Hyrum city council (the "Council") and the County. Hyrum covenants and agrees not to charge Kilgore any impact and connection fees for any utilities or other improvements to the Property associated with the construction of the concrete plant or expansion of the asphalt plant. It is anticipating that the production facilities will be expanded over time to meet demand requirements.

5. Utilities. Once the annexation of the Property is complete, Hyrum shall bring power close to the Kilgore concrete plant and install a 400 Amp transformer and distribution box. Kilgore will pay Hyrum \$14,000 for costs associated with providing power to the concrete building. Hyrum shall bring water to the Kilgore concrete building provided that Kilgore shall provide Hyrum the use of an excavator if such is necessary. Hyrum City at its expense shall bring a 8" water line and hydrant to the property. Hyrum will install a 4" water line from the hydrant to the concrete plant. Hyrum will provide the water pipe, hydrant, and labor to install it. Kilgore will provide the excavation and backfill material for the water line. Kilgore will install, at its sole cost and expense, a lateral line of sewer pipes extending from the sewer man-hole currently located in the Kilgore parking lot to the concrete plant. The Hyrum city engineer shall provide approval that the sewer pipes have been installed in accordance with Hyrum city codes.

6. Nibley Ground Water Protection. Since subject property includes part of Nibley City's culinary water source protection zone, care must be exercised to protect the recharge area from potential contamination. The applicant hereby agrees to connect rest

rooms and other facilities producing domestic waste to Hyrum City's municipal wastewater collection/treatment system as well as complete the required analysis of potential groundwater contamination from storm water runoff and spills of harmful materials associated with use of the property, including the fuel island repair facilities, equipment storage area, paved and unpaved parking lots, etc., and to take such precautions and adopt such BMP's as indicated by the study and all applicable federal, state, and local laws.

7. Tax Benefits. For a period beginning at the time Kilgore sells its first yard of concrete and extending for Ten (10) years, Hyrum City for its portion only of their assessed taxes shall provide a tax discount to Kilgore for sales and property tax, whereby Kilgore shall only pay Fifty Percent (50%) of the taxes normally due to Hyrum for sales and property taxes. There shall be no cap on this tax benefit in addition to the time limit provided herein.

8. Water. As part of Kilgore's consideration to Hyrum for entering into this Agreement, Kilgore shall provide and transfer to Hyrum Nine (9) acre/feet of water.

9. Waiver. No failure by any Party to insist upon strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any right or remedy upon breach thereof, shall constitute a waiver of any breach of this Agreement.

10. Binding Effect. Each Party is bound by this Agreement and any person or corporation, partnership or other entity which succeeds to a Party's rights and responsibilities is also bound.

11. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any action to enforce or interpret this Agreement shall be brought exclusively in the federal or state courts located in Salt Lake County, Utah, and each Party irrevocably submits to the exclusive jurisdiction of such courts.

12. Attorneys' Fees. If any Party incurs any legal fees or costs and expenses in any proceeding to enforce the terms of this Agreement or any of its rights provided hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and any court, arbitration, mediation, or other litigation expenses from the non-prevailing Party.

13. Construction. The headings appearing in this Agreement have been inserted for the purposes of convenience and do not purport to and shall not be deemed to define, limit or extend the scope or intent of the provisions to which they appertain. This Agreement shall not be construed more strongly against any Party regardless of which Party is more responsible for its preparation.

14. Entire Agreement. This Agreement sets forth the entire and complete understanding and agreement between the Parties regarding the subject matter hereof and supersedes any and all other prior agreements or discussions, whether oral, written, electronic or otherwise, relating to the subject matter hereunder. Any additions or modifications to this Agreement must be made in writing and signed by an authorized representative of each Party. The Parties acknowledge and agree that they are not relying upon any representations or statements made by any other Party or the other Party's employees, agents, representatives or attorneys regarding this Agreement, except to the extent that such representations are expressly set forth herein.

15. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart are upon the same instrument, and all signed counterparts shall be deemed to be an original. An electronic (pdf) or faxed copy of the signatures on this Agreement shall be effective.

IN WITNESS WHEREOF, the Parties hereto have caused this Annexation Agreement to be executed effective as of the Effective Date.

KILGORE:

HYRUM:

KILGORE COMPANIES, LLC

HYRUM CITY

By: _____

By: _____

Name: _____

Name: Stephanie Miller

Its: _____

Its: Mayor

